

ENTERED

May 13, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

JULIAN SOLORZANO-GONZALEZ

Petitioner

VS.

UNITED STATES OF AMERICA

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CIVIL ACTION NO. 1:22-CV-034

CRIMINAL ACTION NO. 1:19-CR-999-01

ORDER ADOPTING REPORT AND RECOMMENDATION

In March 2022, Plaintiff Julian Solorzano-Gonzalez filed a Motion to Vacate, Set Aside, or Correct his Sentence Pursuant to 28 U.S.C. § 2255, challenging his conviction for being unlawfully found in the United States after deportation on the grounds that the illegal reentry statute is unconstitutional because it has a discriminatory impact on people of Mexican birth. (Petition, Doc. 1, 3)

A United States Magistrate Judge recommends that the Petition be denied as meritless. (R&R, Doc. 5, 8) Solorzano objected to the Report and Recommendation, reiterating his argument that the illegal reentry statute is unconstitutional. (Objections, Doc. 8, 1) Solorzano also objects to the Magistrate Judge's conclusions that Solorzano procedurally defaulted on his argument and that Solorzano waived his right to challenge the statute when he plead guilty. (*Id.* at 2–3) The Court reviews the portions of the Report and Recommendation to which Solorzano objects *de novo* and all other portions for plain error. *See* FED. R. CIV. P. 72(b)(3).

Based on the allegations within the Petition and the applicable law, the Court concludes that the Report and Recommendation correctly applies the law to the alleged facts. The Government's act of criminalizing the reentry of previously deported aliens is rationally related to its interests in national security and public safety. *See, e.g., United States v. Hernandez-Lopez*, 2022 WL 313774, *7 (S.D. Tex. Feb. 2, 2022). Moreover, Solorzano's "valid and unconditional guilty plea waived the non-jurisdictional constitutional challenges he raises regarding his conviction." *United States v. Ibarra-Rodriguez*, 644 F. App'x 300, 301 (5th Cir. 2016) (citing

United States v. Scruggs, 714 F.3d 258, 261–62 (5th Cir. 2013) (“A voluntary and unconditional guilty plea waives all non-jurisdictional defects.”)). Finally, Solorzano procedurally defaulted on his constitutional argument when he failed to raise it on direct appeal. *See United States v. Lopez*, 248 F.3d 427, 433 (5th Cir. 2001).

As a result, the Court **OVERRULES** Solorzano’s objections and **ADOPTS** the Report and Recommendation (Doc. 5). It is:


ORDERED that Plaintiff Julian Solorzano-Gonzalez’s Motion to Vacate, Set Aside, or Correct his Sentence Pursuant to 28 U.S.C. § 2255 (Doc. 1) is **DENIED** as meritless.

In addition, the Court finds that no outstanding issue would be debatable among jurists of reason, and that Solorzano fails to make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Accordingly, the Court **DENIES** a Certificate of Appealability.

This Order is a final and appealable judgment.

The Clerk of Court is directed to close this matter.

Signed on May 13, 2022.


Fernando Rodriguez, Jr.
United States District Judge